Lynn E. Bell, Esq., Pa I.D. #38588
Davies, McFarland & Carroll, P.C.
One Gateway Center; 10th Floor
Pittsburgh, PA 15222
(412) 338-8527

Attorneys for Menu Foods Limited

IN THE UNITED STATES DISTRICT COURT CIRCUIT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LORI L. WILSON, DONALD STIMMEL and DELORES STIMMEL, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated, Plaintiffs, vs. MENU FOODS, LIMITED, a foreign corporation, Defendant.	CIVIL NO. (Class Action) NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332(d), 1441(a) and (b), AND 1446 AND DEMAND FOR JURY TRIAL; EXHIBIT A; VERIFICATION; CERTIFICATE OF SERVICE

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332(d), 1441(a) and (b), AND 1446

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant MENU FOODS LIMITED, pursuant to 28 U.S.C. §§ 1332(d), 1441(a) and (b) and 1446, files this Notice of Removal (hereinafter "Notice") of this action from the Court of Common Pleas of Fayette County, Pennsylvania, Civil Division, to the United States District Court for the Western District of Pennsylvania. The grounds for removal are as follows:

Dockets.Justia.com

I. INTRODUCTION

1. LORI L. WILSON initiated this products liability action in the Court of Common Pleas of Fayette County, Pennsylvania, Civil Division, entitled *Lori L. Wilson v. Menu Foods Limited, a foreign corporation*, No. 1098 of 2007, G.D, on April 27, 2007.

2. On August 21, 2007, Plaintiff amended her Complaint to add, *inter alia*, class action allegations, as well as three additional plaintiffs (DONALD WILSON, DELORES WILSON, and RUTH BEAL) (together, all plaintiffs named in the Amended Complaint will hereinafter be referred to as "Plaintiffs"). The Amended Complaint is entitled, *Lori L. Wilson, Donald Stimmel and Delores Stimmel, his wife, and Ruth Beal, on behalf of themselves and all others similarly situated v. Menu Foods Limited, a foreign corporation.* A true and correct copy of the Amended Complaint is attached hereto and incorporated by reference as Exhibit A.

3. Plaintiffs allege that their pets became ill and/or passed away upon consuming pet food manufactured and distributed by Defendant. Plaintiffs further claim that they sustained emotional and economic damages, including medical bills due to plaintiffs' emotional distress, the purchase price paid for the pet food, and veterinarian bills and related expenses resulting from their pets' illnesses and/or deaths.

4. Defendant Menu Foods Limited was served with a copy of the Amended Complaint on or about August 21, 2007. Pursuant to 28 U.S.C. §§ 1441 and 1446(b), this Notice of Removal is timely filed.

5. As more fully set forth below, this is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332(d)(2), and this action is removable under 28 U.S.C. §1441(a) and (b), because it is a civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and Plaintiffs are citizens of a state and

Defendant is a citizen or subject of a foreign state. Therefore, pursuant to 28 U.S.C. § 1441(a), Menu Foods Limited may remove this action to this Court.

II. THIS COURT HAS SUBJECT MATTER JURISDICTION

A. The Amount in Controversy Requirement Exceeds $5,000,000

6. Plaintiffs filed this class action on behalf of themselves and similarly situated individuals whose pets allegedly became ill and/or died after consuming various brands of recalled allegedly tainted pet food for dogs and cats manufactured by Menu Foods Limited. Plaintiffs allege that they sustained and continue to sustain economic damages in the form of veterinarian bills and other expenses relating to the illnesses and/or deaths of their pets and the cost of pet food, and emotional damages in the form of medical expenses for treatment to overcome emotional distress. In addition, Plaintiffs allege that the class is "so numerous that joinder of all members is impracticable." Plaintiffs seek extensive relief in the form of compensatory (economic and emotional) damages, plus treble damages, punitive damages and costs and disbursements, including attorneys' fees. No where in the Amended Complaint do Plaintiffs allege that the amount in controversy is less than $5,000,000.

7. There currently are numerous pending class actions against Menu Foods Limited and/or its corporate affiliates in various federal judicial districts in which the named plaintiffs allege that jurisdiction exists under 28 U.S.C. § 1332(d)(2), related to the recall. There is no reason to believe that the amount in controversy, exclusive of costs and interest, in this civil action will be less than those in the other federal cases. Here, the amount in controversy exceeds $5,000,000, exclusive of costs and interest.

8. The Judicial Panel on Multidistrict Litigation ("JPML") has established a Multidistrict Litigation ("MDL") in the United States District Court for the District of New

Jersey for cases arising out of the nationwide pet food recall. The JPML is in the process of transferring pet food recall cases pending in federal courts across the nation to the MDL.

B. Complete Diversity of Citizenship Exists

9. There is complete diversity of citizenship between Plaintiffs and Defendant in this action. Diversity in a class action is established when "any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state." 28 U.S.C. § 1332(d).

10. According to the Complaint, Plaintiffs are all residents of the State of Pennsylvania.

11. Defendant Menu Foods Limited is an Ontario, Canada corporation with its principal place of business in Streetsville, Ontario, Canada.

III. PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

12. This Notice of Removal is timely pursuant to 28 U.S.C. §§ 1441 and 1446(b).

13. The United States District Court for the Western District of Pennsylvania embraces the county in which the state court action is now pending. Therefore, this action is properly removed to the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. § 93(a)(1).

14. Pursuant to 28 U.S.C. § 1446(d), Menu Foods Limited is serving written notice of this removal upon all adverse parties and will file a copy of the notice with the Clerk of the State court in which this action is currently pending.

WHEREFORE, Menu Foods Limited respectfully removes this action from the Court of Common Pleas of Fayette County, Pennsylvania, Civil Division, to the United States District Court for the Western District of Pennsylvania, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Federal Rule of Civil Procedure, Menu Foods Limited hereby demands trial by jury in this action.

DATED: September 10, 2007
Pittsburgh, Pennsylvania

DAVIS McFARLAND & CARROOLL, P.C.

By: /s/ Lynn E. Bell, Esquire
Davies McFarland & Carroll, P.C.
One Gateway Center; 10th Floor
Pittsburgh, PA 15222
(412) 281-0737
lbell@dmcpc.com
PA I.D. #38588
Attorney for MENU FOODS LIMITED, Defendant

IN THE UNITED STATES DISTRICT COURT CIRCUIT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LORI L. WILSON, DONALD WILSON and DELORES WILSON, his wife, and RUTH BEAL, on behalf of themselves and all others similarly situated,	CIVIL NO. ______________ (Class Action)
vs.	VERIFICATION
MENU FOODS, LIMITED, a foreign corporation,	
Defendant.	

VERIFICATION

I, LYNN E. BELL, being duly sworn under oath, say that I am an attorney for Defendant MENU FOODS LIMITED, in this action, that I have the requisite information and am authorized to make this Verification on behalf of Menu Foods Limited, and that the statements contained in the foregoing Notice of Removal are true.

DATED: September 10, 2007
Pittsburgh, Pennsylvania

Lynn E Bell

Lynn E. Bell, Esq.

Subscribed and sworn to before

me this 10th day of Sept, 2007.

Sharon D Warnick

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Sharon D. Warnick, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires July 10, 2011
Member, Pennsylvania Association of Notaries

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 10th day of September, 2007:

Via Facsimile	________
Via Hand Delivery	________
Via First Class U.S. Mail	________
Via Overnight Mail	________
Via Certified Mail/ Return Receipt Request	________
ECF Filing	X

James T. Davis, Esquire
Davis & Davis
107 East Main Street
P.O. Box 1163
Uniontown, PA 15401

Attorney for Plaintiff

DAVIS McFARLAND & CARROOLL, P.C.

By: /s/ Lynn E. Bell, Esquire

Davies McFarland & Carroll, P.C.
One Gateway Center; 10th Floor
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Attorney for MENU FOODS LIMITED,
Defendant